

EN BANC

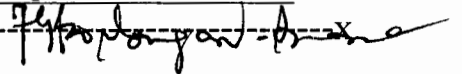
G.R. No. 210273 – BIBIANO C. RIVERA and LUIS K. LOKIN, JR.,
Petitioners, **v. COMMISSION ON ELECTIONS (COMELEC), THE**
SECRETARY GENERAL OF THE HOUSE OF
REPRESENTATIVES, SHERWIN C. TUGNA, and CINCHONA C.
CRUZ-GONZALES, Respondents.

G.R. No. 213069 – CITIZENS' BATTLE AGAINST CORRUPTION
(CIBAC) FOUNDATION as represented by JESUS EMMANUEL L.
VARGAS, Petitioner, v. CIBAC NATIONAL COUNCIL as represented
by EMMANUEL JOEL VILLANUEVA, and the COMMISSION ON
ELECTIONS, Respondents.

Promulgated:

April 19, 2016

X-----



CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I concur with the ponencia in holding that the consolidated Petitions must be dismissed. More particularly, I concur in holding that the Petition for Quo Warranto (docketed as G.R. No. 213069) directly filed before this court by petitioner Citizens' Battle Against Corruption (CIBAC) Foundation should be dismissed for lack of jurisdiction. This Petition is not within this Court's original jurisdiction. Instead, it falls under the exclusive jurisdiction of the House of Representatives Electoral Tribunal.

However, I express my reservations on the reference to a list of three (3) events—proclamation, taking of the oath of office, and assumption of duties—that are made to appear as entirely separate and distinct and, thus, are intimated to be events that must *all* occur before any petition is deemed to be exclusively cognizable by the House of Representatives Electoral Tribunal. Rather than having to await the consummation of all such occurrences, it suffices that a candidate for member of the House of Representatives shall have been proclaimed a winner in order for contests relating to the election, returns, and qualifications of any such member to be within the exclusive jurisdiction of the House of Representatives Electoral Tribunal. Parenthetically, this is also true of senators in relation to the Senate Electoral Tribunal, and the President and Vice President in relation to the Presidential Electoral Tribunal.



Article VI, Section 17 of the 1987 Constitution creates separate electoral tribunals for the Senate and the House of Representatives. It also provides for each tribunal's composition and jurisdiction:

SECTION 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the *sole judge of all contests relating to the election, returns, and qualifications of their respective Members*. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman. (Emphasis supplied)

The term "contest" is understood to refer to post-election disputes. In *Tecson v. Commission on Elections*,¹ this Court interpreted this term as used in the analogous provision in Article VII² of the 1987 Constitution, which spells out the jurisdiction of the Presidential Electoral Tribunal:

Ordinary usage would characterize a "contest" in reference to a post-election scenario. Election contests consist of either an election protest or a quo warranto which, although two distinct remedies, would have one objective in view, i.e., to dislodge the winning candidate from office. A perusal of the phraseology in Rule 12, Rule 13, and Rule 14 of the "Rules of the Presidential Electoral Tribunal," promulgated by the Supreme Court en banc on 18 April 1992, would support this premise —

....

The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President," of the Philippines, and not of "candidates" for President or Vice-President. . . .

It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, would not include cases directly brought before it questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held.³

¹ 468 Phil. 421 (2004) [Per J. Vitug, En Banc].

² CONST., art. VII, sec. 4 provides:
ARTICLE VII. Executive Department
SECTION 4. . . .

....
The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

³ *Tecson v. Commission on Elections*, 468 Phil. 421, 461–462 (2004) [Per J. Vitug, En Banc].

An election protest is “a contest between the *defeated and winning candidates* on the ground of frauds [sic] or irregularities in the casting and counting of the ballots, or in the preparation of the returns. It raises the question of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office.”⁴ A successful election protest results in the revision or a recount of the ballots to determine the true winner of the election.⁵

Tecson explained quo warranto proceedings as follows:

A quo warranto proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election scenario. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election scenario.⁶ (Citation omitted)

In the 2013 case of *Tañada, Jr. v. Commission on Elections*,⁷ this Court En Banc unanimously sustained the jurisdiction of the House of Representatives Electoral Tribunal “over disputes relating to the election, returns, and qualifications of the proclaimed representative[.]”⁸ We emphasized that a candidate’s proclamation as winner was the definitive event that strips the Commission on Elections of jurisdiction, jurisdiction that is then vested exclusively in the House of Representatives Electoral Tribunal:

Case law states that *the proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed representative in favor of the HRET*. The phrase “election, returns, and qualifications” refers to all matters affecting the validity of the contestee’s title. In particular, the term “election” refers to the conduct of the polls, including the listing of voters, the holding of the electoral campaign, and the casting and counting of the votes; “returns” refers to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and “qualifications” refers to matters that could be raised in a *quo warranto* proceeding against the proclaimed winner, such as his disloyalty or ineligibility or the inadequacy of his CoC.⁹ (Emphasis supplied)

⁴ *Samad v. Commission on Elections*, G.R. No. 107854, July 16, 1993, 224 SCRA 631, 639–640 [Per J. Cruz, En Banc].

⁵ *Pasandalan v. Commission on Elections*, 434 Phil. 161, 173 (2002) [Per J. Carpio, En Banc].

⁶ *Tecson v. Commission on Elections*, 468 Phil. 421, 462 (2004) [Per J. Vitug, En Banc].

⁷ G.R. Nos. 207199–200, October 22, 2013, 708 SCRA 188 [Per J. Perlas-Bernabe, En Banc].

⁸ *Id.* at 195.

⁹ *Id.* at 195–196, citing *Jalosjos, Jr. v. Commission on Elections, et al.*, 689 Phil. 192, 198 (2012) [Per J. Abad, En Banc] and *Vinzons-Chato v. Commission on Elections*, 548 Phil. 712, 725 (2007) [Per J. Callejo, Sr., En Banc].

This Court has even clarified that allegations of irregularity as to a candidate's proclamation as winner shall not prevent the House of Representatives Electoral Tribunal from assuming jurisdiction. In *Limkaichong v. Commission on Elections*:¹⁰

Petitioners (in G.R. Nos. 179120, 179132–33, and 179240–41) steadfastly maintained that Limkaichong's proclamation was tainted with irregularity, which will effectively prevent the HRET from acquiring jurisdiction.

The fact that the proclamation of the winning candidate, as in this case, was alleged to have been tainted with irregularity does not divest the HRET of its jurisdiction. The Court has shed light on this in the case of *Vinzons-Chato*, to the effect that:

In the present case, it is not disputed that respondent Unico has already been proclaimed and taken his oath of office as a Member of the House of Representatives (Thirteenth Congress); hence, the COMELEC correctly ruled that it had already lost jurisdiction over petitioner Chato's petition. The issues raised by petitioner Chato essentially relate to the canvassing of returns and alleged invalidity of respondent Unico's proclamation. These are matters that are best addressed to the sound judgment and discretion of the HRET. Significantly, the allegation that respondent Unico's proclamation is null and void does not divest the HRET of its jurisdiction:

x x x [I]n an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate.

Further, for the Court to take cognizance of petitioner Chato's election protest against respondent Unico would be to usurp the constitutionally mandated functions of the HRET.

In fine, *any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member's qualification to sit in the House of Representatives.*

....

Accordingly, *after the proclamation of the winning candidate in the congressional elections, the remedy of those who may assail one's*

¹⁰ 601 Phil. 751 (2009) [Per J. Peralta, En Banc].

*eligibility/ineligibility/qualification/disqualification is to file before the HRET a petition for an election protest, or a petition for quo warranto, within the period provided by the HRET Rules. In Pangilinan v. Commission on Elections, we ruled that where the candidate has already been proclaimed winner in the congressional elections, the remedy of petitioner is to file an electoral protest with the Electoral Tribunal of the House of Representatives.*¹¹ (Emphasis supplied, citation omitted)

A winning candidate's taking of the oath of office and assumption of duties are but natural and necessary consequences of his or her proclamation as winner. They are mere incidents, transpiring precisely and only because a candidate has been previously proclaimed as a winner. Thus, they should not be appreciated separately of proclamation, as though they are entirely non-aligned and self-sufficient occurrences.

In *Codilla, Sr. v. Hon. de Venecia*,¹² this Court described as "no longer a matter of discretion"¹³ the task of the Speaker of the House of Representatives to administer the oath to proclaimed winners for membership in the House of Representatives:

The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment[.]

In the case at bar, the administration of oath and the registration of the petitioner in the Roll of Members of the House of Representatives representing the 4th legislative district of Leyte is no longer a matter of discretion on the part of the public respondents. The facts are settled and beyond dispute: petitioner garnered 71,350 votes as against respondent Locsin who only got 53,447 votes in the May 14, 2001 elections. The COMELEC Second Division initially ordered the proclamation of respondent Locsin; on Motion for Reconsideration the COMELEC en banc set aside the order of its Second Division and ordered the proclamation of the petitioner. The Decision of the COMELEC en banc has not been challenged before this Court by respondent Locsin and said Decision has become final and executory.¹⁴ (Citation omitted)

Only a winner in an election—that is, one who has been proclaimed as such—can proceed to take the oath of office. Further, only one who has

¹¹ Id. at 782–783.

¹² 442 Phil. 139 (2002) [Per J. Puno, En Banc].

¹³ Id. at 189.

¹⁴ Id. at 189–190.

won and taken his or her oath may proceed to validly exercise the functions of an elective public office. Therefore, it remains that the definite occurrence is proclamation as winner: it defines the competencies of the erstwhile candidate (now a winner) and identifies the body with the competence to rule on contests arising from this victory. From this, it follows that it is an error to demand taking of the oath of office and assumption of duties as separate requisites before a contest is deemed to fall within the exclusive jurisdiction of the House of Representatives Electoral Tribunal.

When the Commission on Elections proclaimed CIBAC the winner in the party-list elections and issued National Board of Canvassers Resolution No. 0011-13 on June 5, 2013, it also recognized the nominees identified by the CIBAC National Council as the legitimate nominees. At this juncture, any petition contesting the election, returns and/or qualifications of CIBAC and, by extension, of its nominees should have been filed before the House of Representatives Electoral Tribunal.

As CIBAC acquired more than four percent (4%) of the votes cast for the party-list system, taking the oath of office and assuming duties as members of the House of Representatives necessarily followed for CIBAC's first two (2) nominees, Sherwin N. Tugna and Cinchona C. Cruz-Gonzales. As soon as CIBAC was proclaimed, their taking of oaths and assumption of duties became certain. As soon as this proclamation transpired, petitioner CIBAC Foundation should have filed an election protest, quo warranto, or mandamus petition before the House of Representatives Electoral Tribunal within 10 days from May 18, 2013.¹⁵ Instead, it erroneously filed its quo warranto petition before this Court.

¹⁵ 2011 HRET Rules, Rules 16 and 17 provide:

RULE 16. Election Protest. – A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

No joint election protest shall be admitted, but the Tribunal, for good and sufficient reasons, may consolidate individual protests and hear and decide them jointly. Thus, where there are two or more protests involving the same protestee and common principal causes of action, the subsequent protests shall be consolidated with the earlier case to avoid unnecessary costs or delay. In case of objection to the consolidation, the Tribunal shall resolve the same. An order resolving a motion for or objection to the consolidation shall be unappealable.

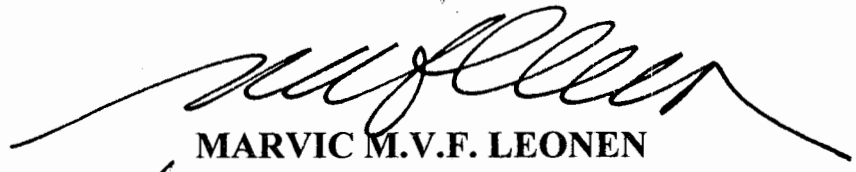
The protest is verified by an affidavit that the affiant has read it and that the allegations therein are true and correct of his knowledge and belief or based on verifiable information or authentic records. A verification based on "information and belief," or upon "knowledge, information and belief," is not a sufficient verification.

An unverified election protest shall not suspend the running of the reglementary period to file the protest.

An election protest shall state:

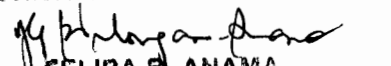
1. The date of proclamation of the winner and the number of votes obtained by the parties per proclamation;
2. The total number of contested individual and clustered precincts per municipality or city;
3. The individual and clustered precinct numbers and location of the contested precincts; and
4. The specific acts or omissions complained of constituting the electoral frauds, anomalies or irregularities in the contested precincts.

ACCORDINGLY, I vote to **DISMISS** the consolidated Petitions.



MARVIC M.V.F. LEONEN
Associate Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

RULE 17. Quo Warranto. – A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The provisions of the preceding paragraph to the contrary notwithstanding, a petition for quo warranto may be filed by any registered voter of the district concerned against a member of the House of Representatives, on the ground of citizenship, at any time during his tenure.

The rule on verification and consolidation provided in Section 16 hereof shall apply to petitions for quo warranto.